No. 18-483	
Title:	**Kristina Box, Commissioner, Indiana Department of Health, et al., Petitioners** **v.** **Planned Parenthood of Indiana and Kentucky, Inc., et al.**
Docketed:	October 16, 2018
Linked with 18A284	
Lower Ct:	United States Court of Appeals for the Seventh Circuit
Case Numbers:	(17-3163)
Decision Date:	June 25, 2018

DATE	PROCEEDINGS AND ORDERS
Sep 14 2018	Application (18A284) to extend the time to file a petition for a writ of certiorari from September 23, 2018 to October 22, 2018, submitted to Justice Kagan. **Main Document** **Lower Court Orders/Opinions** **Proof of Service**
Sep 19 2018	Application (18A284) granted by Justice Kagan extending the time to file until October 22, 2018.
Oct 12 2018	Petition for a writ of certiorari filed. (Response due November 15, 2018) **Petition** **Appendix** **Certificate of Word Count** **Proof of Service**
Oct 23 2018	Motion to extend the time to file a response from November 15, 2018 to December 5, 2018, submitted to The Clerk. filed. **Main Document**
Oct 25 2018	Motion to extend the time to file a response is granted and the time is extended to and including December 5, 2018.
Nov 14 2018	Brief amicus curiae of Association of American Physicians & Surgeons filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amici curiae of Alliance Defending Freedom and the Radiance Foundation filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amici curiae of American Center for Law & Justice, et al. filed. (11/20/208) **Main Document** **Proof of Service** **Certificate of Word Count**

Nov 15 2018	Brief amici curiae of Americans United for Life, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amici curiae of Fondation Jerome Lejeune, Saving Down Syndrome, and Down Pride filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amicus curiae of Eagle Forum Educational and Legal Defense Fund, Inc. filed. **Proof of Service** **Certificate of Word Count** **Main Document**
Nov 15 2018	Brief amici curiae of The Restoration Project, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amicus curiae of Susan B. Anthony List filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amici curiae of Pro-Life Legal Defense Fund, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amicus curiae of Beverly McMillan, M.D. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amici curiae of State of Wisconsin, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Brief amicus curiae of CatholicVote.org Education Fund filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 15 2018	Amicus brief of Prolife Center at the University of St. Thomas not accepted for filing. (November 20, 2018)(Corrected version submitted)
Nov 15 2018	Brief amici curiae of Ethics and Religious Liberty Commission of the Southern Baptist Convention, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Nov 19 2018	Amicus brief of American Center for Law & Justice and Parents of Disabled Children not accepted for filing. (November 20, 2018) (Corrected version submitted)
Nov 19 2018	Brief amicus curiae of Prolife Center at the University of St. Thomas filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Dec 04 2018	Brief of respondents Planned Parenthood of Indiana and Kentucky, Inc., et al. in opposition filed. **Main Document** **Certificate of Word Count** **Proof of Service**

Dec 18 2018	Reply of petitioners Commissioner of the Indiana State Department of Health, et al. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Dec 19 2018	DISTRIBUTED for Conference of 1/4/2019.
Jan 07 2019	DISTRIBUTED for Conference of 1/11/2019.
Jan 14 2019	DISTRIBUTED for Conference of 1/18/2019.
Feb 04 2019	DISTRIBUTED for Conference of 2/15/2019.
Feb 19 2019	DISTRIBUTED for Conference of 2/22/2019.
Feb 25 2019	DISTRIBUTED for Conference of 3/1/2019.
Mar 11 2019	DISTRIBUTED for Conference of 3/15/2019.
Mar 18 2019	DISTRIBUTED for Conference of 3/22/2019.
Mar 25 2019	DISTRIBUTED for Conference of 3/29/2019.
Mar 28 2019	Letter of March 15, 2019 from counsel for amicus curiae Wisconsin received. (Distributed)
Mar 28 2019	Letter of March 27, 2019 from counsel for amicus curiae West Virginia received. (Distributed)
Apr 08 2019	DISTRIBUTED for Conference of 4/12/2019.
Apr 15 2019	DISTRIBUTED for Conference of 4/18/2019.
Apr 22 2019	DISTRIBUTED for Conference of 4/26/2019.
May 06 2019	DISTRIBUTED for Conference of 5/9/2019.
May 13 2019	DISTRIBUTED for Conference of 5/16/2019.
May 20 2019	DISTRIBUTED for Conference of 5/23/2019.

May 28 2019	Petition GRANTED and Judgment REVERSED as to Question 1 presented by the petition. Petition DENIED as to Question 2 presented by the petition. **Opinion** per curiam. (Detached **Opinion**). Justice Sotomayor would deny the petition for a writ of certiorari as to both questions presented. Justice Thomas, concurring. (Detached **Opinion**). Justice Ginsburg, concurring in part and dissenting in part. (Detached **Opinion**).
Jul 01 2019	JUDGMENT ISSUED.

NAME	ADDRESS	PHONE
Attorneys for Petitioners		
Thomas M. Fisher Counsel of Record	Indiana AG's Office, IGC S., 5th Fl. 302 W. Washington Indianapolis, IN 46204 tom.fisher@atg.in.gov	317-232-6255
Party name: Commissioner of the Indiana State Department of Health, et al.		
Attorneys for Respondents		
Kenneth J. Falk Counsel of Record	ACLU of Indiana 1031 E. Washington Indianapolis, IN 46202 kfalk@aclu-in.org	3176354059
Party name: Planned Parenthood of Indiana and Kentucky, Inc., et al.		
Other		
Steven Henry Aden Counsel of Record	Americans United for Life 2101 Wilson Blvd. Suite 525 Arlington, VA 22201 Steven.Aden@aul.org	202-741-4917
Party name: Americans United for Life and Charlotte Lozier Institute		
Ryan C. Berry Counsel of Record	Ward & Berry, PLLC 2000 Pennsylvania Avenue NW Suite 4500 Washington, DC 20006 ryan@wardberry.com	202-331-8160
Party name: Susan B. Anthony List		
Dorinda C. Bordlee Counsel of Record	Bioethics Defense Fund 3312 Cleary Avenue Metairie, LA 70002 dbordlee@bdfund.org	5042317234
Party name: Fondation Jerome Lejeune, Saving Downs, Down Pride		

Thomas L. Brejcha Jr.
Counsel of Record

Thomas More Society
309 W. Washington Street
Suite 1250
Chicago, IL 60606

3127821680

brejcha@aol.com

Party name: Restoration Project, Pastor Joseph Parker, Everlasting Light Ministries, Protect Life and Marriage Texas, Thomas More Society

Frederick W. Claybrook Jr.
Counsel of Record

Claybrook, LLC
700 Sixth St., NW, Ste. 430
Washington, DC 20001

202-250-3883

rick@claybrooklaw.com

Party name: Ethics and Religious Liberty Commission of the Southern B aptist Convention, et al.

Teresa Stanton Collett
Counsel of Record

University of St. Thomas School of Law
MSL 400
1000 LaSalle Avenue
Minneapolis, MN 55403

6512712958

tscollett@stthomas.edu

Party name: Prolife Center at the University of St. Thomas

Scott William Gaylord
Counsel of Record

Elon University School of Law
201 North Greene Street
Greensboro, NC 27401

3362799331

sgaylord@elon.edu

Party name: CatholicVote.org Education Fund

Lawrence J. Joseph
Counsel of Record

Law Office of Lawrence J. Joseph
1250 Connecticut Avenue, NW
Suite 700-1A
Washington, DC 20036

2023559452

ljoseph@larryjoseph.com

Party name: Eagle Forum Educational and Legal Defense Fund

William Jeffrey Olson
Counsel of Record

William J. Olson, P.C.
370 Maple Ave. W., Suite 4
Vienna, VA 22180

7033565070

wjo@mindspring.com

Party name: Pro-Life Legal Defense Fund, Eleanor McCullen, One Nation Under God Foundation, Conservative Legal Defense and Education Fund, Pass the Salt Ministries, Liberty Fellowship, Pastor Chuck Baldwin, Fitzgerald Griffin Foundation, Policy Analysis Center, Restoring Liberty Action Committee, and Center for Morality

Andrew L. Schlafly
Counsel of Record

939 Old Chester Road
Far Hills, NJ 07931

908-719-8608

aschlafly@aol.com

Party name: Association of American Physicians & Surgeons

Lindsay Sara See Counsel of Record	Office of the West Virginia Attorney General 1900 Kanawha Blvd E, Bldg 1 Rm 26E Charleston, WV 25305 lindsay.s.see@wvago.gov	3045582021

Party name: State of Wisconsin, et al.

Jay Alan Sekulow Counsel of Record	American Center for Law and Justice 201 Maryland Avenue, N.E. Washington, DC 20002 sekulow@aclj.org	(202)546-8890

Party name: American Center for Law & Justice and Parents of Disabled Children

Catherine Wynne Short Counsel of Record	Life Legal Defense Foundation P.O. Box 1313 Ojai, CA 93024-1313 lldfojai@earthlink.net	(707) 224-6675

Party name: Beverly McMillan, M.D.

Kevin Hayden Theriot Counsel of Record	Alliance Defending Freedom 440 1st Street, NW Washington, DC 20001 ktheriot@ADFlegal.org	202-393-8690

Party name: Alliance Defending Freedom and the Radiance Foundation

Misha Tseytlin	Wisconsin Dept. of Justice 17 W. Main Street Madison, WI 53703 tseytlinm@doj.state.wi.us	(608) 267-9323

Party name: State of Wisconsin, et al.

No. _____

IN THE
Supreme Court of the United States

COMMISSIONER OF THE INDIANA STATE DEPARTMENT OF HEALTH, *et al.*,

Petitioners,

v.

PLANNED PARENTHOOD OF INDIANA AND KENTUCKY, INC., *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

CURTIS T. HILL, JR.
Attorney General
THOMAS M. FISHER
Solicitor General
(Counsel of Record)
KIAN HUDSON
JULIA C. PAYNE
Deputy Attorneys General

Counsel for Petitioners

QUESTIONS PRESENTED

1. Whether a State may require health care facilities to dispose of fetal remains in the same manner as other human remains, *i.e.*, by burial or cremation.

2. Whether a State may prohibit abortions motivated solely by the race, sex, or disability of the fetus and require abortion doctors to inform patients of the prohibition.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

INTRODUCTION AND STATEMENT OF THE CASE 3

I. The Fetal Disposition Provision 5

II. The Non-Discrimination Provision 6

III. The Decisions Below 8

REASONS FOR GRANTING THE PETITION 14

I. **The Court Should Resolve the Circuit Conflict over the Nationally Important Question Whether States May Require Fetal Remains To Be Handled the Same as Other Human Remains** 14

A. The decision below conflicts with the Eighth Circuit's decision upholding an identical requirement in Minnesota 14

B. The fetal remains provision is valid..... 19

II. Whether States May Preclude Discriminatory Abortion Based on the Race, Sex, or Disability of the Fetus (Including Down Syndrome) Is a Nationally Important Question Worthy of Immediate Consideration 22

A. States need to address the newly emergent threat of abortions targeting the race, sex, and disability of the fetus, and the stakes are too high to await further percolation 22

B. The non-discrimination provision does not interfere with the right protected by *Roe* and *Casey* 26

CONCLUSION..... 30

APPENDIX..... 1a

Opinion of the United States Court of Appeals for the Seventh Circuit (Apr. 19, 2018)..... 1a

Final Judgment of the United States District Court for the Southern District of Indiana (October 11, 2017)..... 46a

Order on Cross-Motions for Summary Judgment of the United States District Court for the Southern District of Indiana (September 22, 2017) 48a

Entry Granting Plaintiff's Motion for Preliminary Injunction of the United States District Court for the Southern District of Indiana (June 30, 2016) 76a

Order of the United States Court of Appeals for the Seventh Circuit (June 25, 2018) 114a

Order of the United States Court of Appeals for the Seventh Circuit (June 8, 2018) 127a

Final Judgment of the United States Court of Appeals for the Seventh Circuit (June 25, 2018) 129a

Indiana Code chapter 16-34-4 ..... 131a

Indiana Code subsection 16-34-2-1.1(a)(1)(k) 135a

Indiana Code section 16-34-3-4 ..... 136a

TABLE OF AUTHORITIES

CASES

Cavel International, Inc. v. Madigan,
500 F.3d 551 (7th Cir.).....20

Edwards v. Beck,
786 F.3d 1113 (8th Cir. 2015).....28

Eisenstadt v. Baird,
405 U.S. 438 (1972).....27

Gonzales v. Carhart,
550 U.S. 124 (2007).....19, 29

Guam Soc'y of Obstetricians & Gynecologists v. Ada,
962 F.2d 1366 (9th Cir. 1992).....28

Isaacson v. Horne,
716 F.3d 1213 (9th Cir. 2013).....28

Jane L. v. Bangerter,
102 F.3d 1112 (10th Cir. 1996).....28

McCormack v. Herzog,
788 F.3d 1017 (9th Cir. 2015).....28

MKB Management Corp. v. Stenehjem,
795 F.3d 768 (8th Cir. 2015).....28

Planned Parenthood of Ind. & Ky. v. Comm'r, Ind. State Dep't of Health
888 F.3d 300 (7th Cir. 2018).....1

CASES [CONT'D]

Planned Parenthood of Ind. & Ky. v. Comm'r, Ind. State Dep't of Health
265 F. Supp. 3d 859 (S.D. Ind. 2017) 1

Planned Parenthood of Ind. & Ky. v. Comm'r, Ind. State Dep't of Health
194 F. Supp. 3d 818 (S.D. Ind. 2016) 1

Planned Parenthood of Minnesota v. Minnesota,
910 F.2d 479 (8th Cir. 1990) ..... *passim*

Planned Parenthood of Southeastern Pennsylvania v. Casey,
505 U.S. 833 (1992) 14, 19, 26, 27

Preterm-Cleveland v. Himes,
No. 18-3329 (6th Cir. filed Apr. 12, 2018) 25

Roe v. Wade,
410 U.S. 113 (1973) 9, 14, 19, 28

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 2

U.S. Const. amend. XIV, § 1 2

STATUTES

18 Pa. Cons. Stat. § 3204 25

28 U.S.C. § 1254(1) 1

STATUTES [CONT'D]

Ariz. Rev. Stat. Ann. § 13-3603.02 25

Ark. Code Ann. § 20-16-1904 (eff. Jan. 1, 2018).....25

Ark. Code Ann. § 20-17-801 17

Ind. Code § 16-21-11-6 5

Ind. Code § 16-25-4.5-2 6

Ind. Code § 16-34-2-1.1(a)(1)(K) 6, 7, 8

Ind. Code § 16-34-3-2(a).....5

Ind. Code § 16-34-3-4(a).....5

Ind. Code § 16-34-4-1(b).....6

Ind. Code § 16-34-4-4 8

Ind. Code § 16-34-4-5 .....6, 8

Ind. Code § 16-34-4-6 .....6, 8

Ind. Code § 16-34-4-7 .....6, 8

Ind. Code § 16-34-4-8 .....6, 8

Kan. Stat. Ann. § 65-6726.....25

La. Rev. Stat. Ann. § 40:1061.1.2 25

La. Rev. Stat. Ann. § 1191.2 17

STATUTES [CONT'D]

Minn. Stat. § 145.1621 15

Minn. Stat. § 145.1621(3) 15

N.C. Gen. Stat. § 90-21.121 25

N.C. Gen. Stat. § 130A-131.10 17

N.D. Cent. Code § 14-02.1-04.1 25

Ohio Rev. Code Ann. § 2919.10 25

Ohio Rev. Code Ann. § 3701.341 17

Okla. Stat. tit. 63, § 1-301.10 17

Okla. Stat. tit. 63, § 1-731.2 25

S.D. Codified Laws § 34-23A-64 25

Tex. Health & Safety § 697.004 17

OTHER AUTHORITIES

Amber Haque, *Labour Calls for Ban on Early Foetus Sex Test*, BBC News, Sept. 17, 2018, https://bbc.in/2QMHgD7 25

Brian G. Skotko, *With New Prenatal Testing, Will Babies with Down Syndrome Slowly Disappear?*, 94 Disease in Childhood 823 (2009) 23